

**United States District Court for the Western
District of Washington (Seattle)**

UNITED STATES OF AMERICA

Plaintiff
vs.

Gregory Tift

Defendant

CASE: 2:20-cr-00168 JCC

**Defendants supporting brief of
Attorney Robert Goldsmith leave of
court to withdrawal.**

Noted for December 17, 2021, before
Michelle Peterson. Without oral argument

COMES NOW: GREGORY TIFT by way of self-representation and joins the motion to withdraw submitted by Robert Goldsmith standby counsel, Court Docket 39. On December 2, 2021, defendant's motion to appear pro se was granted, with Robert Goldsmith assigned standby counsel. Stated in the order Mr. Goldsmith agreed on the record that, if assigned to the standby counsel role, he would not interfere with Mr. Tift's handling of the case or provide unsolicited advice. *See* dkt # 37 at 4 n. 1-4. Standby counsel has made interference with Defendant. If the court requires more discussion parties can disclosed this in camera as not to compromise the standby attorney client privilege or embarrassment.

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Mr. Goldsmith is asking for leave of court to withdraw at defendant's request. Defendant is injecting himself into this Motion of Goldsmith withdrawal for clarification and to [firmly] state he agrees with the withdrawal and freely assents to his termination as standby.

BACKGROUND /DISSCUSSION

On December 6, 2021 Attorney Robert Goldsmith herein referred to as standby filed a thread bare motion with the court for an order to withdraw. The motion references at Mr. Tift's explicit request I am moving to withdraw. The defendant "Tift" since December 2, 2021, has been self-represented in that short timeframe "Tift" has become aware that even a standby counsel becomes an ineffective assistance to defendant even if ordered to remain on as an understudy. Defendant and Standby are in stark contrast along with contention surfacing with passive aggressive remarks by standby¹.

¹Defendant has learned in the past and current that Standby has failed to make a reasonable effort to establish a relationship of trust and confidence with defendant *see* dkt. # 30 Transcript *id.at* P,5 2-13 ref discovery deficiencies. Defendant counsel "Standby" was not effective pretrial assistance. Defendant has communicated with AUSA Casey Konzatti the parties agree to a much-needed discovery conference and discussion of a continuance. Defendant faces a dilemma of chasing down his discovery from his previous attorney creating a prejudice to his defense this is counterproductive to the case. Tift's puzzling view as a lay person and while conducting interviews with criminal attorneys is that 97% of Criminal attorneys attempt to negotiate defendants [into prison] (*Plea agreements*). An accused most powerful defense is the safeguards created by the US Constitution as well as, Brady v. Maryland and its progeny to disclose exculpatory materials and information. Defendant has always maintained the supplied discovery was incomplete. The AUSA has no easy job here to prosecute a case. The USA, AUSA, "Casey Konzatti" has been courteous, professional, and transparent to ensure defendant will receive all relevant discovery to prepare for trial. The CJA also has given defendant access to what is available funding and the interworking's of achieving the usefulness of CJA funds, pursuant to this knowledge defendant is assembling his legal team. With every hour defendant confidence rises, defendant prior statement as to overwhelming is diminished. Dkt # 34 at 5. As stated by defendant on the record during the December 1st, 2021, *Faretta* hearing a self-represented party must first prove himself worthy before the court to appear pro se even if it is his constitutional right. Defendant, request the court not apply an unconscious basis on defendant Tift's ability to defend as a basis to deny standby withdrawal. Ref <https://implicit.harvard.edu/implicit/takeatest.html>.

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On December 3, 2021, Tift ask standby pursuant to what he applied as standby participation for a solicited opinion. Standby replied ² and cited United States v. Salerno, 81 F.3d 1453, 1456 n.2 (9th Cir. 1996). A review of that case has brought to light some more basis as to the ineffectiveness of a standby counsel or advisory. Set forth below is the circuit opinion.

ALARCON, Circuit Judge:

This appeal presents a novel question: Does section 3006A of the Criminal Justice Act require a district court to compensate an attorney who serves solely as an advisor at the request of an indigent defendant who has asserted his or her right to self-representation? We conclude that section 3006A does not authorize a district court to compensate an attorney whose service as a legal advisor is requested by the defendant.

The above case cited begs the question as to compensation pursuant to Section 3006 of the CJA.

The case status is defendant is in full preparation for trial, with all the same funding resources, along with the knowledge to tap those funds to include Circuit expert presumptive and service provider hourly rates. The CJA local office also has provided defendant a list of investigators, defendant is in the process of vetting those investigators, as well as forensic chemist and a jury consultant. Defendant understands Evidence Rule 901 expert testimony evidence can be used at trial. There is no set of circumstances that the court can apply that will predict the outcome of defendants pro se representation and the effectiveness of the standby counsel involvement, this would require the court to possess a crystal ball. Mr. Goldsmith has not made the distinction of standby as demonstrated on his signature page *see* dkt. # 39 p 1 and again p 2., *Attorney for defendant*

² “What is more, identifying issues, research and writing are what lawyers do. So do it yourself, counsel.”

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1 Mr. Goldsmith mere presence appearing on the case summary page, creates a pushback from
2 cooperation of experts and pretrial release of essential information that may aid defendant's
3 defense. His exit will create no prejudice or delay where later his involvement does.
4

5 **ISSUE BEFORE THE COURT**

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7 Should standby counsel be allowed to withdraw without compromising the defendants defense? Or
8
9 create any unnecessary delay in the case? Should defendant be forced into ineffective, adverse
10 effects cause by standby?
11

12 **LEGAL MEMORANDUM**

13
14 The self-represented defendant can find little case law as to standby counsel withdrawing once
15 appointed, the most defining case of standby participation is McKaskle v. Wiggins, 465 U.S. 168
16 (1984). Defendant therefore at the court's discretion has cited what he believes is a supporting legal
17 authority to assist in a lawful decision to allow standby to withdraw, (*Standby, Counsel and*
18 *advisory counsel are use here in interchangeably*). The local Court rule of CrR 5g (4) refers
19
20 Withdraw of Attorneys to Local Civil Rule LCR 83.2(b) Withdrawal of Attorneys (1) No attorney
21 shall withdraw an appearance in any case, civil or criminal, except by leave of court, unless the
22 withdrawal complies with the requirements of subsections (b)(2) or (b)(3). Leave shall be obtained
23
24 by filing a motion or a stipulation and proposed order for withdrawal or, if appropriate in a criminal
25 case, by complying with the requirement of CrR 5(g).
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1 A motion for withdrawal shall be noted in accordance with LCR 7(d)(3) or CrR 12(b) (criminal
2 cases). A Decision of this court should be made within the context of a potentially adverse impact
3 on the Defendant, in the present case there may be a competing interest here as standby has
4 demonstrated, pride, bias and resentment behavior having more of adverse effect to defendant.
5 There has been a breakdown in the attorney-client relationship. Specifically... It is within the
6 defendant's right to seek counsel of their choice. See Bland v. California Dep't of Corrections, 20
7 F.3d 1469, 1474-75 (9th Cir. 1994) (holding the defendant has a constitutional right to be
8 represented by an attorney-client relationship devoid of conflict). Like in Bland, the motion is
9 timely, as it is before trial. See id. at 1475. Here in, the defendant will not be prejudiced if
10 **Standby, Attorney, Advisory** withdraws, as there is a plenty of time to retain new standby
11 counsel. See generally Henderson v. Duncan, 779 F.2d 1421, 1424-25 (9th Circuit 1986) (stating
12 that non-delay is a factor in determining that there is no prejudice). Defendant has been empowered
13 under his constitutional right to appear pro se, self-represented along with the court's approval Dkt.
14 # 37 Nonetheless, prejudice need not be shown when the constitutional right to representation is at
15 play. See Crandell v. Bunnell, 144 F.3d 1213, 1215 (9th Cir. 1998) (no prejudice need be shown in
16 a motion to substitute counsel.) in Tift's case defendant is in fact a substitute counsel.

22 CONCLUSION

23 As demonstrated by this supporting brief and taking into consideration the totality of circumstance
24 and applying adequate cause, Withdrawal of Mr. Goldsmith as standby counsel should be granted,
25 wherefor that defendant may seek replacement if determine.

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1 There is no prejudice to any party by standby departure and no unnecessary delay.

2 The defendant continues to demonstrate his working knowledge of courts while appearing pro se.

3 Respectfully

4 Dated this December 13, 2021

5 s/Gregory S. Tift

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9
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on the 13 day of December 2021, I electronically filed the foregoing with
12 the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent
13 electronically to the Assistant U.S. Attorney, counsel of record for the Government and any
14 other party requiring notice.
15

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